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10 UNITED STATES BANKRUPTCY COURT

11 DISTRICT OF NEVADA

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13 In re: ) Case No. BK-S-10-27855-BAM  
14 AMERICAN PACIFIC FINANCIAL )  
15 CORPORATION, ) Chapter 11  
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1 in the Trustee Motion as if fully set forth herein and, in further support thereof, respectfully  
2 states as follows:

3 **I.**

4 **INTRODUCTION**

5 The Commission is the federal agency charged with, among other things, the regulation and  
6 enforcement of the federal securities laws. [See 15 U.S.C. §§ 77t, 78d, 78u et al.]. The  
7 Commission's interest in this case is to ensure compliance with applicable federal securities  
8 laws, protect its enforcement interest,<sup>1</sup> and ensure that American Pacific Financial  
9 Corporation's ("Debtor" or "APFC") investors, all of whom the Debtor has listed as unsecured  
10 creditors, are treated fairly.

11 The Trustee Motion establishes sufficient cause to warrant the appointment of a Chapter 11  
12 trustee pursuant to 11 U.S.C. § 1104(a)(1). The Commission shares the concerns raised by the  
13 Acting U.S. Trustee with respect to the Debtor remaining in possession of this estate and fully  
14 supports the appointment of a Chapter 11 trustee in this case so that an independent fiduciary is  
15 in control of the Debtor and its assets.

16 **II.**

17 **DISCUSSION**

18 **A. APFC's and Polhill's Fraudulent Misrepresentations and Omissions**

19 As detailed in the Trustee Motion, the Debtor and Larry Polhill ("Polhill"), the Debtor's  
20 representative, president, director, and 100% equity owner, have made material  
21 misrepresentations and have omitted material facts from representations made to investors  
22 during the course of APFC's promissory note offering. Specifically, the Trustee Motion details  
23 at least five instances wherein the Debtor and Polhill materially misled three APFC investors, all

24

25 <sup>1</sup> The Commission has an ongoing, non-public investigation into the activities and conduct  
26 of the Debtor and related persons and entities to determine whether federal securities laws have  
27 been violated. The Commission is continuing its investigation notwithstanding the pending  
28 bankruptcy case as an action by a governmental unit to enforce its police or regulatory power in  
accordance with the exception to the automatic stay provided at 11 U.S.C. § 362(b)(4). The  
Commission has filed a proof of claim in this case. [See Claim No. 98-1].

1 of whom have submitted declarations in support of the Trustee Motion:

2 • **The USPL Note:** In December 2004, APFC issued Paul Hazell (“Hazell”), a creditor of  
3 APFC, and his wife a \$400,000 promissory note, signed by Polhill, pledging certain  
4 collateral defined as U.S. Plastic Lumber Equipment Financing  
5 (“USPL”), which Polhill claimed owned equipment worth over \$1 million which  
6 could be sold to satisfy APFC’s obligations under the note. Unbeknownst to  
7 Hazell, in July 2004, USPL had already filed a voluntary petition under Chapter  
8 11 of the Bankruptcy Code in the Southern District of Florida. An affiliate of the  
9 Debtor, AMPAC Capital Solutions, made an appearance in the USPL bankruptcy  
10 case in August 2004, four months prior to when Hazell signed the promissory  
11 note with APFC. [See Trustee Motion at ¶¶ 11-17; Docket No. 231, Declaration  
12 of Paul Hazell (“Hazell Dec.”)].

13 • **The Glen Cove Notes:** In September 2007, Hazell and his wife agreed to roll the USPL  
14 Note into a \$507,364 note purportedly secured by certain real estate located at 88-90  
15 Hazel Street, Glen Cove, New York. In January 2008, Hazell and his wife agreed to roll  
16 two other APFC notes into another APFC promissory note in the amount of \$501,151,  
17 also purportedly secured by the Glen Cove property. Polhill signed both Glen Cove  
18 notes on behalf of APFC. However, as detailed in APFC’s filings with the Court, the  
19 Glen Cove property had already been assigned to a third party mortgage lender before  
20 Hazell signed either of the Glen Cove notes. The third party lender subsequently  
21 foreclosed on the property, which has no value to the Debtor. [See Trustee Motion at ¶¶  
22 18-22; Hazell Dec.; Docket No. 61-6].

23 • **The G,B & L Note:** In 2003, William Mudd (“Mudd”), a creditor of APFC, invested  
24 \$60,000 from an individual retirement count into an APFC affiliate. He did so after  
25 being told by a former APFC representative that his investment was secured by all of the  
26 assets of APFC as well as personally guaranteed by Polhill. In May 2003, Mudd  
27 invested another \$360,134 in an APFC issued promissory note that was purportedly  
28 secured by accounts receivable of G,B & L, a trucking company. Polhill signed the note

1 on behalf of APFC. In March 2005, Mudd rolled this note over for another term. In  
 2 March 2008, Polhill informed Mudd that G, B &L had in fact gone out of business years  
 3 earlier due to ongoing litigation concerning an accident involving one of its truckers.  
 4 This was the first Mudd had ever heard of this information concerning G,B&L's  
 5 operating status. [See Trustee Motion at ¶¶ 24-25, 27-28; Docket No. 232, Declaration of  
 6 William Mudd ("Mudd Dec.")].

- 7 • **The Orange Texas Note:** In April 2004, Mudd invested \$400,000 with APFC through a  
 8 promissory note, signed by Polhill, purportedly secured by certain real estate located at  
 9 601 Division Street, Orange, Texas. In January 2008, Mudd rolled over this investment  
 10 into a new note totaling \$490,279, also purportedly secured by the Orange, Texas  
 11 property. Mudd later learned that APFC ceased making mortgage payments on the  
 12 Orange, Texas property. In April 2008, APFC transferred the property to two third  
 13 parties pursuant to a No Warranty Deed (In Lieu of Foreclosure). [See Trustee Motion at  
 14 ¶¶ 26 and 30; Mudd Dec.].
- 15 • **The Hesperia Note:** In June 1997, Jose Pabon ("Pabon"), a creditor of APFC, rolled  
 16 over a prior investment with APFC into a \$47,124 promissory note, signed by Polhill,  
 17 and purportedly secured by certain real estate located at 16545 Hercules Street, Hesperia,  
 18 California 92345. The note continued to rollover at the end of each term. Pabon  
 19 subsequently discovered that, in February 2004, APFC had sold the Hesperia property.  
 20 This was despite the fact that, per the terms of the note, the Hesperia property continued  
 21 to serve as collateral for Pabon's investment, which indicated that the property would  
 22 remain as security for the note until it was fully repaid, which it had not been. [See  
 23 Trustee Motion at ¶¶ 34-37; Docket No. 230, Declaration of Jose Pabon].

24 The facts discussed above demonstrate that the Debtor and Polhill repeatedly made  
 25 fraudulent misrepresentations and omitted material facts from representations made to investors  
 26 concerning the collateral that purportedly secured their promissory notes. These fraudulent and  
 27 dishonest acts constitute "cause" within the meaning of Section 1104(a)(1) of the Bankruptcy  
 28 Code, requiring the appointment of a trustee to manage the affairs of this Debtor. As detailed in

1 the three investors'/creditors' respective declarations, had the investors been made aware of the  
2 true facts regarding the property securing their investments, they never would have invested in,  
3 rolled-over, and continued to hold their prior investments in the promissory notes. The Debtor's  
4 and Polhill's fraudulent or, at the very minimum, dishonest course of dealing with investors in  
5 APFC's promissory note offering render them unfit to serve in the fiduciary capacity demanded  
6 of a debtor-in-possession. Section 1104(a)(1) will not countenance leaving the Debtor and  
7 Polhill in charge of the assets of this estate on behalf of the very creditors whose investments  
8 they procured through deceit. Accordingly, the Commission supports the Trustee's Motion for  
9 appointment of a Chapter 11 trustee.

10 **B. Registration Violations under the Federal Securities Laws**

11 In addition to the fraudulent misrepresentations and omissions made by APFC and Polhill,  
12 APFC's promissory note offering and the offering of interests in an investment fund through  
13 American Pacific Financial Group II, Ltd. (the "APFG II Fund") appear to have violated the  
14 registration provisions of the federal securities laws, as they were not registered with the  
15 Commission pursuant to Section 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act"),  
16 15 U.S.C. §§ 77e(a) and 77e(c). For the reasons noted in ¶ 63 of the Trustee Motion, the  
17 promissory notes offered and sold by APFC qualify as securities under Section 2(a)(1) of the  
18 Securities Act , 15 U.S.C. § 77b(a)(1), and Section 3(a)(10) of the Securities Exchange Act of  
19 1934 ("Exchange Act"), 15 U.S.C. § 78c(a)(10). Further, as detailed in the Pabon Declaration,  
20 APFC offered and sold interests in an investment fund through APFG II Fund, for which it sent  
21 periodic statements to investors. [See Pabon Dec. ¶ 10-12]. The list of APFC's 20 largest  
22 unsecured creditors names APFGGroup and APFGGroup II as its two largest unsecured creditors,  
23 with claims totaling nearly \$51 million. [See Docket No. 3; See also Docket No. 61-1, detailing  
24 APFC's role with respect to APFGGroup and APFGGroup II]. The interests in APFG II Fund also  
25 appear to be securities as defined by the federal securities laws.

26 Section 5(a)(1) of the Securities Act prohibits the direct or indirect sale of securities through  
27 the mail or interstate commerce unless a registration statement has been filed and is in effect.  
28 Section 5(c) of the Securities Act prohibits the offer for sale of securities through the mail or

1 interstate commerce unless a registration statement has been filed with the Commission. A  
2 *prima facie* case of a violation of Section 5 is established by showing that: (1) no registration  
3 statement was filed or in effect for the offering of the securities; (2) the defendant, directly or  
4 indirectly, sold or offered to sell the securities; and (3) the sale was made through the use of  
5 interstate facilities or the mails. SEC v. Ralston Purina Co., 346 U.S. 119, 126 (1953).

6 Here, all elements of a *prima facie* case are present. No registration statement was filed or in  
7 effect for either the promissory note or investment fund offerings. [See Declaration of Marc J.  
8 Blau, ¶ 4 and Ex. A - attestation of Commission's Records Officer], and APFC and Polhill  
9 offered and sold the securities through the use of interstate facilities to investors in several  
10 states. [See Docket No. 3, listing 20 largest creditors, who are located in California, South  
11 Dakota, Washington, Colorado, and Nevada]. Accordingly, the Commission is able to establish  
12 a *prima facie* case that APFC and Polhill violated Section 5 of the Securities Act by failing to  
13 register the securities offerings with the Commission.

14 Additionally, depending upon how the securities were offered and sold and what services  
15 APFC and Polhill provided to its investors, the Debtor also may have violated the broker-dealer  
16 registration requirements imposed by Section 15 of the Exchange Act, 15 U.S.C. § 78o(a), as  
17 well as the investment-adviser registration requirements of Section 203 of the Investment  
18 Advisers Act of 1940, 15 U.S.C. § 80b-3. [See Blau Dec. at Ex. A]. As noted above, the  
19 Commission has an ongoing investigation into the activities of the Debtor and related persons  
20 and entities, and part of the investigation will focus on whether APFC or others needed to be  
21 registered with the Commission, and if so, in what capacity. The failure to comply with  
22 applicable federal securities registration laws not only would be illegal but also would constitute  
23 gross mismanagement of a debtor's business, another element that would establish "cause"  
24 under Section 1104(a)(1) of the Bankruptcy Code. All of the facts discussed herein and in the

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28 ///

1 Trustee Motion amply establish cause to appoint a Chapter 11 trustee in this case under  
2 11 U.S.C. § 1104(a)(1).

3 **III.**

4 **CONCLUSION**

5 WHEREFORE, the United States Securities and Exchange Commission respectfully requests  
6 the entry of an Order: (i) directing the immediate appointment of a Chapter 11 trustee; and (ii)  
7 providing such other relief as the Court deems appropriate.

8  
9 Dated: March 28, 2011

Respectfully submitted,

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11   
12 SARAH D. MOYED  
13 MARC J. BLAU  
14 Attorneys for the  
U. S. SECURITIES AND  
EXCHANGE COMMISSION

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## CERTIFICATE OF SERVICE

On March 28, 2011, I served the following document(s): **U.S. SECURITIES AND EXCHANGE COMMISSION'S JOINDER TO, AND STATEMENT IN SUPPORT OF, THE ACTING UNITED STATES TRUSTEE'S MOTION FOR THE APPOINTMENT OF A CHAPTER 11 TRUSTEE PURSUANT TO 11 U.S.C. § 1104**

**(A)(1).** The document was served by the following means to the persons as listed below:

### **Service By ECF System**

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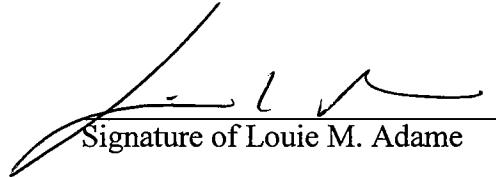
3 American Pacific Financial Corporation  
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5 Internal Revenue Service  
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6 Las Vegas, Nevada 89106

7 **I declare under penalty of perjury that the foregoing is true and correct.**

8 Signed on March 28, 2011

10 Louie M. Adame



Signature of Louie M. Adame

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